87-345

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

In re Julia McCain Lampkin Asam, Ph.D., J.D.,
Petitioner and/or Appellant

APPEAL AND/OR PETITION
FOR A WRIT FOR MANDAMUS FROM THE
U.S. COURT OF APPEALS, ELEVENTH CIRCUIT

JURISDICTIONAL STATEMENT

AND/OR PETITION

Julia McCain Lampkin Asam, Ph.D., J.D.
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58pp

QUESTION PRESENTED

I. Whether the lower federal court can completely abuse the Federal Rules of Civil Procedure (specifically Rules 12(a), 36(a), 56(c), 26(c), 12(f) and 8(d) by the U.S. District Court Middle District of Florida, and said abuse was allowed by the U.S. Court of Appeals, Eleventh Circuit, denying Writ for Mandamus, case number 87-3184) when said rules were originally approved by the Supreme Court of the United States, because said abuse violates Plaintiff/Petitioner's due process rights under the Fifth Amendment to the United States Constitution?

SUB ISSUES UNDER QUESTION ONE

(a) Whether the Hon. Judge Kovachevich should be directed by the Honorable Supreme Court of the United States to rule according to the law and the Federal Rules of Civil Procedure Rule 12(a), and reverse her order denying the Plaintiff's Motion for Entry of Default and grant the Plaintiff's Motion for Judgment for Default?

(b) Whether the Hon. Judge Kovachevich should be directed by the Supreme Court of the United States by granting this Writ for Mandamus to rule according to the law

and the Federal Rules of Civil Procedure Rule 12(a) and Rule 36 (a) and grant the Motion for Summary Judgment by Plaintiff because the Defendant, Robert J. Shapiro, failed to timely file his Answers to the Complaint or Answers to the Request for Admissions and the issue of liability is deemed admitted and the only issue to be determined by the U.S. District Court, Middle District of Florida, Fort Myers Division is how much are the damages?

(c) Whether the Hon. Judge Kovachevich should be directed by the Honorable Supreme Court of the United States by granting this Writ of Mandamus to rule according to the law and the Federal Rules of Civil Procedure, Rule 26(c) and reverse the denial of Plaintiff's Protective order where the defendant is causing undue burden on the plaintiff by requesting enormous files which the Defendant, Robert J. Shapiro, already has in his possession?

(d) Whether the Hon. Judge Kovachevich should be directed by the Honorable Supreme Court of the United States by granting this Writ of Mandamus to rule according to the law and the Federal Rules of Civil Procedure Rule 12 (f) and reverse her denial of Plaintiff's Motion to Strike "Defendant's Motion to Strike" because Defendant's motion not filed pursuant to 12(f) within 20 days of service?

II Whether the Plaintiff/Petitioner and/or Appellant's civil rights are violated under 42 U.S.C. §1983 (since underlying case from instant malpractice case is 42 U.S.C. §1983 case number 86-3142 which was affirmed by U.S. Court of Appeals, Eleventh Circuit erroneously and now coming to the Supreme Court of the United States within the 90 days) by this abuse of the Federal Rules of Civil Procedure by an Honorable Judge as discussed in Question One, thus causing this Writ for Mandamus to be treated like an appeal not just court's discretion -- plus should be treated like an appeal since appeal from final order of judgment of the U.S. Court of Appeals, Eleventh Circuit, dated May 27, 1987 (See APPENDIX A)?

PARTIES BELOW

All parties below are parties to this petition.

The plaintiff/petitioner is Julia L. Asam.

The defendants/ respondents are Hon. Elizabeth A. Kovachevich, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, U.S. Court of Appeals, Eleventh Circuit, 56 Forsyth St., N.W., Atlanta, Georgia, 30303; Mr. John D. Shofi, Attorney, Marlow, Shofi, et al., 2907 Bay to Bay Blvd. Ste. 201, The Bayshore Buildings, Tampa, Florida 33629 and Mr. Robert J. Shapiro, 13822 Cherry Creek Dr., Tampa, Florida 33618.

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STATEMENT REGARDING ORAL ARGUMENT

Because of the complexitities, irregularities and numerous judicial errors made in the lower court, oral argument is requested so that the Honorable Justices can understand and ask questions.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. ___

In re Julia McCain Lampkin Asam, Ph.D., J.D.,
Petitioner and/or Appellant

APPEAL AND/OR PETITION FOR A WRIT FOR MANDAMUS FROM THE U.S. COURT OF APPEALS, ELEVENTH CIRCUIT

The petitioner, Julia L. Asam, respectfully prays for a Writ for Mandamus to direct the Honorable Elizabeth A. Kovachevich, U.S. District Judge, to rule according to law and the Federal Rules of Civil Procedure concerning the timely filing of Answers to the Complaint, Rule 12(a), the timely filing of Answers to the Requests for Admissions, Rule 36(a), and other rules 56(c), 26(c) 12(f) and 8(d) discussed in this petition.

OPINIONS BELOW

The order, dated May 27, 1987, of the United States Court of Appeals, Eleventh Circuit, denying the Writ for Mandamus, was without an opinion, (See order in APPENDIX A.)

JURISDICTION

Under 28 U.S. §1651, the Supreme Court of the United States has authority to issue extraordinary writs.

The jurisdiction of the Supreme Court of the United States to review the final judgment order of the U.S. Court of Appeals, Eleventh Circuit, is invoked under 28 U.S.C. §1254, as appeal or Writ.

The Supreme Court of the United States has jurisdiction under 28 U.S.C. §2106.

The Supreme Court of the United States has juridiction under 42 U.S.C. §1983 and 28 U.S.C. §1343(3).

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT V

The Plaintiff/Petitioner's due process rights under the Fifth Amendment of the U.S. Constitution are violated when an Hon. Judge does not rule according to the law and Federal Rules of civil Procedure.

RULES INVOLVED

The pertinent parts of the following rules involved in this Petition for Writ for Mandamus are discussed below.

1. The Federal Rules of Civil Procedure, Rule 12(a) states.

> "...the reponsive pleading shall be served within 10 days after notice of the court's action."

2. The Federal Rules of Civil Procedure, Rule 36(a) states,

> "...The matter is admitted unless... or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer.

3. The Federal Rules of Civil Procedure, Rule 56 (c) states,

"The judgment shought shall be rendered forthwith if the pleadings ... admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

4. The Federal Rules of Civil Procedure, Rule 26(c) provides that a court"for good cause shown ... may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense ..."

5. The Federal Rules of Civil Procedure, Rule 12(f) states,

"Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him ..."

6. The Federal Rules of Civil Procedure, Rule 8(d) states,

"Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those

as to the amount of damage, are admitted when not denied in the responsive pleading.

STATEMENT OF THE CASE

This Writ for Mandamus is filed in the Supreme Court of the United States after the U.S. Court of Appeals, Eleventh Circuit, denied on May 27, 1987, the application by the Petitioner for Writ of Mandamus from the U.S. District Court for the Middle District of Florida. (See APPENDIX A).

The instant underlying case no. 87-6-CIV-Ft. M. 17 (B) is a diversity of citizenship with malpractice action of the Defendant, Robert J. Shapiro, also attorney, who made a demand of $5000 unearned money within 48 hours or he would withdraw as attorney in the underlying case number 86-3142 in the U.S. Court of Appeals, Eleventh Circuit, and said 86-3142 is about to be filed in the Supreme Court of the United States by appeal or Writ

for Certiorari. Because the Defendant, Robert J. Shapiro would not release his unearned contingency fee contract until after the underlying trial when he suddenly withdrew from the case because the plaintiff was unable to produce $5000 unearned money within 48 hours or he would withdraw from the case. The Plaintiff had to be a pro se at this trial that led to the appeal case no. 86-3142 because Mr. Shapiro would not release his unearned contingency fee so that she could hire another attorney.

The Respondent to this Writ for Mandamus is the Hon. Elizabeth A. Kovachevich, who is a resident of Florida and is an U.S. District Judge in the U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602.

The Complaint was originally filed Oct. 30, 1986 in the U.S. District Court, Northern District of Alabama, Western Division and was

case no. CV 86 P 2020 W.

The Defendant, Robert J. Shapiro, filed on Nov. 20, 1986, Motion to Dismiss or Alternatively to Transfer in the U.S. District Court, Northern District of Alabama, Western Division.

Defendant filed Motion of Defendant for Extension of Time to Response to Interrogatories, Request for Production and Request for Admissions and motion was granted on Jan. 7, 1987, with a deadline being Feb. 9, 1987, for filing of discovery, (See APPENDIX B). [Note there was no request to extend the time to Answer the Complaint].

On Jan. 13, 1987, the Hon. Judge Pointer ordered the instant underlying case transferred to the U.S. District Court, Middle District of Florida, Fort Myers Division, and the Order was entered Jan. 13, 1987 and the counsel were notified. Therefore, the target date for the Defendant to have filed the Answers was Jan. 23, 1987 but the Defendant did not file his Answers until Feb. 11, 1987. The Motion for

Judgment by Default by plaintiff was filed on Feb. 9, 1987, before the Answers of the Defendant, filed on Feb. 11, 1987, that were due 10 days after Jan. 13, 1987, the date the underlying case was transferred.

On Jan. 13, 1987, the U.S. District Court, Northern District of Alabama, Office of the Clerk, oficially notified and forwarded the original pleadings to the U.S. District Court, Middle District of Florida. (See APPENDIX C.)

On Jan. 20, 1987, the Transmittal letter filed as NR no. 1, Docket Sheet p. 1, in the U.S. District Court, Middle District of Florida, was forwarding the original file from the Northern District of Alabama, U.S. District Court. On the front cover sheet for the Docket sheets that the filing date in the U.S. District Court, Middle District of Florida is Jan. 20, 1987. Even if the Defendant was suppose to file within 10 days of this Jan. 20, 1987 date, the Defendant was still late in

filing his Answers since he did not file his Answers until Feb. 11, 1987.

The Defendant clearly filed his Answers late on Feb. 11, 1987 (NR no. 8 on Docket Sheet p. 2) after the Plaintiff had filed her Motion for Judgment by Default, NR 5 Feb. 9, 1987 with proposed Default to be entered filed on Feb. 4, 1987. (See Docket Sheet p. 1). [Note a certified copy of the Docket Sheet is being requested from the Clerk, U.S. District Court, Middle District of Florida to be sent direct to the Supreme Court of the United States; however, pertinent parts of the Docket sheet are found in APPENDIX D.]

On Feb. 13, 1987 the Defendant wrote a Motion Objecting to Motion for Default Judgment by Defendant. NR 9. On Feb. 19, 1987, before the 10 days to respond had expired the Hon. Judge Kovachevich filed the order that Defendant's Motion Objecting to Motion for Entry of Default is granted and Plaintiff's Motion for Entry of Default is denied. See NR 20,

Docket sheet p. 2. This order by the Hon. Judge Kovachevich is one of the main reasons for this Writ for Mandamus being written requesting the Honorable U.S. Court of Appeals, Eleventh Circuit, and now the Supreme Court of the United States since the Writ for Mandamus to the U.S. Court of Appeals, Eleventh Circuit, (See Appendix A) was denied, to direct the Hon. Judge Kovachevich to rule according to the law and Federal Rules of Civil Procedure because the bottom line is that the Defendant in the underlying case did not file his answers timely.

On Feb. 20, 1987 was filed the Plaintiff's Motion to Strike Defendant's motion to strike because not filed within 20 days of service by plaintiff (See Motion NR 11 filed by Defendants as Motion to Strike by Defendant and plaintiff motion is NR 24).

On March 5, 1987, plaintiff filed motion for extension of time to respond to interrogatories ... and motion for protective order by Plaintiff, NR 31. The extension of time

was granted but the protective order was not when the Defendant is asking for numerous documents that have to be xeroxed that he already has in his possession. The protective order was denied on March 12, 1987. The plaintiff was willing to produce papers but believes it is totally unnecessary that the plaintiff was being made to produce papers that the Defendant has in his files and were his files in the underlying case to 86-3142.

The plaintiff filed on March 9, 1987 Motion for Summary Judgment by Plaintiff since the Defendant failed to timely file his answers to the complaint and failed to timely file his answers to the request for admissions and therefore, the liability issue was admitted. The Motion for Summary Judgment was denied.

ARGUMENT AND REASONS FOR GRANTING THE APPEAL OR WRIT

I. The lower federal courts can not completely abuse the Federal Rules of Civil Procedure, thus, violating the plaintiff/petitioner's Fifth Amendment due process rights under the U.S. Constitution when said rules were originally approved by the Supreme Court of the United States.

The Hon. Judge Kovachevich, U.S. Judge from the U.S. District Court Middle District of Florida has specifically abused the Federal Rules of Civil Procedure Rules 12(a), 36(a), 56(c), 26(c), 12(f) and 8(d) as described in this Writ for Mandamus. The said abuse was allowed by the U.S. Court of Appeals, Eleventh Circuit, denying Writ for Mandamus, case number 87-3184 -- see APPENDIX A for order.

The most important reason this Writ for Mandamus should issue is because the liability issue is over when the Defendant is deemed

to have admitted the Complaint by not timely filing the Answers and the Defendant is deemed to have admitted the Requests for Admissions. Therefore, the Hon. Judge Kovachevich should be directed to grant either a Default Judgment or Summary Judgment in favor of the Plaintiff/Petitioner since the liability issue in case 87-6-CIV F.M. 17 (B) has been admitted by the Defendant since the Defendant failed to timely file his Answers to the Complaint and Answers to the Requests for Admissions. The only issue left in the underlying case at the U.S. District Court, Middle District of Florida is the issue of damages.

Unless the Defendant wishes to settle the case since the damages can be calculated from a Salary Schedule for equivalent back pay, the Plaintiff/Petitioner has a demand for jury trial in which the issue of damages can be determined if the Honorable Court should issue the Writ for Mandamus to direct the Honorable

Judge Kovachevich to rule according to the law and Federal Rules of Civil Procedure.

The following sub-issues itemized on p. i of this Writ for Mandamus are discussed in this Argument...

(a) The Hon. Judge Kovachevich should be directed by the Honorable Supreme Court of the United States by granting this Writ for Mandamus to rule according to the law and the Federal Rules of Civil Procedure Rule 12(a) which states,

"...the responsive pleading shall be served within 10 days after notice of the court's action."

and reverse her order denying the Plaintiff's Motion for Entry of Default and grant the Plaintiff's Motion for Entry of Default and grant the Plaintiff's Motion for Judgment by Default. The point is the Defendant failed to timely file his Answers and did not make any request for extension of time. The target date for a timely filing of the Answers was Jan. 23, 1987 and the Defendant filed his Ans-

wers to the Complaint late on Feb. 11, 1987 without permission of the Court. Further, if the time of Jan. 20, 1987, the date the instant underlying case 87-6-CIV F.M. 17 (B) was filed into the U.S. District Court, Middle District of Florida, after being ordered to transfer from the U.S. District Court, Northern District of Alabama on Jan. 13, 1987 the Defendant was late in filing his Answers to the Complaint from either date.

According to Rule 8(d) of the Federal Rules of Civil Procedure which states,

"Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. (F.R.C.P. 8(d).

Therefore by Defendant failing to plead (i.e. failure to answer complaint) within applicable time limits, the defendant has admitted the truth of the allegations of the complaint except the amount of the damages.

See Minnesota Mining & Manufacturing Co.

v. Eco Chem. Inc., 757 F. 2d 1256 (U.S. Court of Appeals, Federal Circuit, 1985), which held that entry of default judgment against alleged infringer in patent infringment suit upon alleged infringer's failure to serve answers to interrogatories was not an abuse of discretion.

See Inryco, Inc. v. Metropolitan Engineering Co., Inc., 708 F. 2d 1225 (7th Cir. 1983) which held that a ruling on a Rule 60(b) motion to vacate default judgment will be overturned only for abuse of discretion.

Also see Federal Deposit Ins. Corp. v. Tripati, 769 F. 2d 507, (C.A. 8 (S.D.) 1985), 2 Fed. R. Serv. 3d 794.

(b) The Honorable Judge Kovachevich should be directed by the Honorable Supreme Court of the United States by granting this Writ for Mandamus to rule according to the law and the Federal Rules of Civil Procedure Rule 12(a)

and Rule 36 (a) and grant the Motion for Summary Judgment by Plaintiff because the Defendant, Robert J. Shapiro, failed to timely file his Answers to the Complaint or Answers to the Request for Admissions and the issue of liability is deemed admitted and the only issue to be determined by the U.S. District Court Middle District of Florida, is how much are the damages.

Defendant failed to timely file his Answers to the Complaint (see NR 8) which he filed on Feb. 11, 1987 when the Answers were due on Jan. 23, 1987 (10 days after the order to transfer) or at the latest 10 days after Jan. 20, 1987 which was the date the transmittal letter was filed in the U.S. District Court, Middle District of Florida. The Defendant filed untimely from both dates. The Defendant did not timely file his Answers to the Requests for Admissions with the certificate of service stating the date sent was Feb. 11,

1987 but not received by Plaintiff until Feb. 18, 1987, and the envelope was not stamped canceled by the post office. The Plaintiff had already sent by express mail Feb. 17, 1987 and filed on Feb. 18, 1987, NR 14 and NR 15 Memorandum to Court that Defendant Failed to Respond to the Request for Admissions by Plaintiff. The point is that the Defendant was late filing the answers to the requests for admissions even using his Feb. 11, 1987 date on his certificate of service since the Defendant according to Rule 36(a) of the Federal Rules of Civil Procedure was to file within the Feb. 9, 1987. The Defendant failed to file a further extension of time and therefore the Answers to the Requests for Admissions by Defendant were not timely filed.

See Asea, Inc. v. Southern Pacific Transportation co., 669 F. 2d 1242 which states,

"Failure to answer or object to proper request for admission is itself an admission. Fed. Rules Civ. Proc. Rule 36(a).

See Goodman v. Mead Johnson & Co. 534 F. 2d 556 at 557, (3rd Cir. 1976) which states,

"Defendant's request for admissions which was not denied was properly deemed admitted for purposes of defendant's motion for summary judgment. Fed. Rules Civ. Proc. rules 36(a), 56(c), 28 U.S.C.A.

Donovan v. Carls Drug Co., Inc., 703 F 2d 650, U.S. Court of Appeals, 2nd Circuit, 1983) states,

"Admissions made pursuant to request may be used for summary judgment. Fed. Rules Civ. Proc. Rules 36 (a), 56, 28 U.S.C.A.

In the instant case, there is a Motion for Summary Judgment by Plaintiff because there was no genuine issue of material fact since the admissions and complaint are deemed admitted because the Defendant failed to timely respond to the Request for Admissions (F.R.C.P. 36(a), and failed to timely answer the complaint (F.R.C.P. 12(a) and 8(d). Therefore, Plaintiff was entitled to a summary judgment as a matter of law. However, the Hon. Judge denied the summary judgment. (See F.R.C.P.

Rule 56 (c). Also see Johnson Co. v. Reconstruction Finance Corp. 230 F. 2d 479 (9th Cir. 1956) Headnote on F.R.C.P. 56(c).

Therefore, the Honorable Judge Kovachevich should be directed by this Honorable Court through granting this Writ of Mandamus to rule according to the law and Federal Rules of Civil Procedure 56(c), 36(a), 12(a), and 8(d) and the Hon. Judge Kovachevich should grant the Motion for Summary Judgment by Plaintiff since the only issue left in this lawsuit since the liability issue is admitted, is the issue of damages.

(c) The Honorable Judge Kovachevich should be directed by the Honorable Supreme Court of the United States by granting this Writ for Mandamus to rule according to the law and the Federal Rules of Civil Procedure Rule 26(c) and reverse the denial of Plaintiff's protective order where the defendant is causing

undue burden on the plaintiff by requesting enormous files which the Defendant, Robert J. Shapiro, already has in his possession. This unnecessary production is expensive.

See Farnsworth v. Procter & Gamble Co., 758 F. 2d 1545 (11th Cir., 1985) which states that on p. 1547,

"The district court based its ruling on Fed. R. Civ. P. 26(c) which provides that a court "for good cause shown ... may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense ..."
"the federal courts have superimposed a somewhat more demanding balancing of interest approach to the Rule.

(d) The Honorable Judge Kovachevich should be directed by the Honorable Supreme Court of the United States by granting this Writ for Mandamus to rule according to the law and the Federal Rules of Civil Procedure Rule 12(f) and reverse the denial of Plaintiff's Motion to Strike "Defendant's Motion to Strike", NR 24, because the Defendant did not file pursuant to 12(f) within 20 days of Service.

Therefore, the Defendant should be barred from making a Motion to Strike in the Complaint in Feb. 1987 when such Motion to Strike by Defendant should have been made in Nov. 1986.

See the Florida case on malpractice and punitive damages Ray-Mar Beauty College Inc. v. Ellis Rubin Law Offices, 475 So. 2d 718, 3rd Dist. Court of Appeal of Florida, 1985, which states,

"Evidence was sufficient for jury on punitive damages claim in legal malpractice action against law firm and individual attorney." (Emphasis added.)

See In re Paradyne Corp. and In re F. William Siergrist, 803 F. 2d 604 (11th Cir. 1986) in which a Writ for Mandamus was granted concerning the same U.S. District Court and same Judge, Honorable Judge Kovachevich. The instant Writ for Mandamus is respectively requested to direct the Honorable Judge Kovachevich to rule according to the law and Federal Rules

of Civil Procedure 12(a), 36(a), and 56(c) as discussed and argued above.

II. The Plaintiff/Petitioner and/or Appellant's civil rights are violated under 42 U.S.C. §1983 by this abuse of Honorable Judge Kovachevhich as discussed in Question One, thus causing this Writ for Mandamus to be treated like an appeal from the U.S. Court of Appeals, 11th Circuit, not just court's discretion -- plus should be treated as an appeal since an order from U.S. Court of Appeals, 11th Circuit, dated May 27, 1987,(See APPENDIX A).

The instant underlying case, 87-6-CIV F.M. (B) is a diversity of citizenship action under 28 U.S. §1332 malpractice action on underlying 42 U.S.C. §1983 action with pendent libel.

The underlying case 87-6-CIV F.M. 17 (B) should not have been transferred to Tampa since the case is a diversity of citizenship case that originated in the U.S. District Court, Northern District of Alabama as case number CV 86 P 2020W. The case was transferred from the federal court in Birmingham, Alabama for

alleged lack of im personam jurisdiction, the subject of another Writ for Mandamus, 87-7252 from U.S. Court of Appeals, Eleventh Circuit (90 days not expired yet to be filed in Supreme Court of the United States).

The point is there is too much bias in the federal court in Tampa, Florida probably due to the fact the trial judge recused himself from the underlying 42 U.S.C. §1983 case after the trial judge had verbally attacked the plaintiff for no reason in open court. (Details will be in the case 86-3142 from the U.S. Court of Appeals, Eleventh Circuit, to be sent to the Supreme Court of the United States before the 90 days expire).

All of these problems with this case started because the former plaintiff's attorney said he would withdraw from the case unless he received $5000 of unearned money. However, the opposing attorney in the instant underlying case 87-6-CIV F.M. 17 (B) instead of dealing with the merits filed his Answers late, his

answers to the requests for admission late, and all the stated sub-issues of Question One discussed above were due to Mr. John Shofi creating diversion tactics in the U.S. District Court, Middle District of Florida, instead of dealing with the malpractice of his client.

The latest delaying and wasting the court's time pleading of Mr. Shofi consists of writing a Motion to Compel to produce a document which he was pretending he did not receive after his office had signed a return receipt for registered mail containing the said document. Then, Mr. Shofi sent a Request for Production for the duplicate of the said discovery, which was sent to him. The Plaintiff/Petitioner, and/or Appellant has not heard anything from the court concerning the Motion to Compel a document already sent to Mr. Shofi last April, 1987. The bottom line is the opposing attorney, Mr. Shofi, would file his papers on time, the plaintiff/petitioner would not have had to respond as discussed in Question One.

Since the instant underlying case is a malpractice case concerning two liability issues in the 86-3142 underlying case consisting of deprivation of liberty interest rights without due process triggering the remedy under 42 U.S.C. §1983 and the pendent libel per se with actual malice were clearly demonstrated at trial by the Plaintiff showing all the elements of a prima facie case for both issues-- the reason for the appeal, case 86-3142 from the U.S. Court of Appeals, Eleventh Circuit, to be filed in the Supreme Court of the United States within the 90 days.

To summarize: the stigmatizing issue should have been decided by the jury since disputed facts remained at end of trial and Clemons v. Dougherty County, Georgia, 684 F. 2d 1365 (11th Cir. 1982) precluded summary judgment; therefore, the directed verdict for Defendants should have been vacated.

Damages do not have to be proved in libel per se (Gertz v. Robert Welch, Inc., 680 F. 2d 527, (7th Cir., 1982). Also see McGhee v. Draper, 639 F. 2d 639 (10th Cir., 1981).

In underlying case 86-3142 what started as a mistake (P. Ex. 9), which was corrected at the unemployment office (P. Ex. 11) but was not corrected in the Personnel File of Dr. Asam at the Lee County School Board. The teacher's personnel file in the state of Florida is a public record; see Dade County School Board v. Miami Herald Pub. Co., 443 So. 2d 268, DCA of Fla., 3rd Dist. 1983. The mistake (P.Ex.9) escalated to stigmatization when the Lee County School Board failed to remove the false unemployment form (P. Ex. 9) when no corrected form or letter or notice in the personnel file stated that the false unemployment had been corrected. The Honorable U.S. Court of Appeals, Eleventh Circuit made a gross error in case 86-3142 by basing their

affirmation of the case on the Board's attorney, Mr. Harry Blair's phantom document 34 which is non-existent in the record (i.e. there is no corrected unemployment form in the personnel file of Dr. Asam). (The details will be in the appeal or Writ of Certiorari of case 86-3142 when filed in the Supreme Court of the United States within the 90 days.

When one Personnel Director, Mr. DeShazo, can make a lie (p. Ex. 9) in case 86-3142 that is permanently uncorrected in Dr. Asam's Personnel File of Lee County School Board, and one man, Mr. DeShazo, with the help of the Lee County School Board ratifying Mr. DeShazo acts, can destroy a teacher's career in the future permanently by stigmatization under 42 U.S.C. §1983 in preventing her from obtaining any teaching position so that Dr. Asam had to study another career, law, after she was over age 50, (not yet practicing - only

graduated in 1986) and libel per se with malice is shown in this personnel file which is a public record (see Dade County School Board v. Miami Herald Pub. Co. supra,) because no correction was made in her personnel file after notice, then JUSTICE SHOULD BE PROVIDED BY THE COURT.

CONCLUSION

The order by the U.S. Court of Appeals, Eleventh Circuit should be reversed and the Writ for Mandamus should be granted to direct the Honorable Judge Kovachevich, U.S. Judge from the U.S. District Court Middle District of Florida to rule according to the law and Federal Rules of Civil Procedure i.e. the liability issues are deemed admitted from the complaint and requests for admissions and the only issues left are what are the damages and what are the punitive damages to be decided by a jury. Therefore, the Honorable Judge Kovachevich should either reverse her

decision on the Motion for Default Judgment or Motion for Summary Judgment in the U.S. District Court based on the law and Federal Rules of Civil Procedure that the liability issues are deemed admitted when the Answers and Requests for Admissions are filed late without prior requests for extension of time. The protective order and motion to strike the punitive damages should be reversed according to Federal Rules of Civil Procedure 26 (c) and 12(f) as discussed above. Therefore, punitive damages should be allowed in that a jury can decide whether to have punitive damages -- not a judge based on an untimely motion by the opposing attorney striking punitive damages when his client asked for $5000 within 48 hours or he would withdraw from the case which is malpractice per se.

Dated August 14th, 1987.

Respectfully submitted,

Julia McCain Lampkin Asam

Julia McCain Lampkin Asam, Ph.D., J.D.
P.O. Box 1022
University, Alabama 35486

Certificate of Service on next page.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above Jurisdictional Statement and/or Petition was sent to Honorable Elizabeth A. Kovachevich, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk U.S. Court of Appeals, Eleventh Circuit, 56 Forsyth St., N.W., Atlanta, Georgia, 30303; Mr. John D. Shofi, Attorney, Marlow, Shofi, et al., 2907 Bay to Bay Blvd. Ste. 201, The Bayshore Buildings, Tampa, Florida 33629 and Mr. Robert J. Shapiro, 13822 Cherry Creek Dr., Tampa, Florida 33618 this 14th day of August 1987.

Julia McCain Lampkin Asam

Julia McCain Lampkin Asam, Ph.D., J.D.
P.O. Box 1022
University, Alabama 35486

APPENDIX

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APPENDIX A Order of final judgment from the U.S. Court of Appeals, Eleventh Circuit, denying Writ for Mandamus, dated May 27, 1987 ..... 1a

APPENDIX B Order of U.S. District Judge of the U.S. District Court, Northern District of Alabama granted Jan. 7, 1987, showing Defendant Shapiro had until Feb. 9, 1987 to respond to discovery of requests for Admissions 1a

APPENDIX C Letter dated Jan. 13, 1987 showing Clerk of U.S. District Court, Northern District of Alabama writing to Clerk of the U.S. District Court, Middle District of Florida concerning the transfer to the federal court in Florida. The letter stated, "We 3a

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APPENDIX C (CONTINUED)

are enclosing our original pleadings, certified copy of the order of transfer and docket entries." 3a

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APPENDIX A

Order filed May 27, 1987.

"IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT NO. 87-3184

IN RE: JULIA L. ASAM, Ph.D.

Petitioner.

Application for Writ of Mandamus from the United States District Court for the Middle District of Florida.

Before FAY, ANDERSON and EDMONDSON, Circuit Judges.

BY THE COURT.

Pro Se Petitioner's Application for a Writ of Mandamus is denied.

A True Copy

Attested

Clerk U.S. Court of Appeals, Eleventh Circuit

By /s/ Meredith Barker

Deputy Clerk

Atlanta, Ga."

APPENDIX B

This document which is an order shows that the Request for Admissions was due Feb. 9,

APPENDIX B (CONTINUED)

1987, and said order was filed Jan. 5, 1987. "In the United States District Court for the Northern District of Alabama, Western Division JULIA L. ASAM, Plaintiff v. ROBERT J. SHAPIRO, Defendant, Case No.: CV 86 P 2020W

MOTION FOR AN EXTENSION OF TIME TO RESPOND TO INTERROGATORIES, REQUEST FOR PRODUCTION AND REQUEST FOR ADMISSIONS

Comes now the defendant, Robert J. Shapiro, in the above-styled case and moves the Court for an order extending the time allowable for him to respond to the above discovery requests of the plaintiff from January 9, 1987 until February 9, 1987, for the following grounds:

1. This case was filed on October 30, 1986.

2. The defendant filed a motion to dismiss or in the alternative, to transfer the case to Florida on November 19, 1986.

3. The above motion was not heard by the Court until December 29, 1986, and is now taken under advisement by the Court.

[in handwriting] Granted 1-7-87, Pointer,

APPENDIX B (CONTINUED)

USDJ [Stamped] ENTERED Jan. 7, 1987 and

[initialed] djd."

APPENDIX C

"UNITED STATES DISTRICT COURT

Office of the Clerk

Northern District of Alabama

Room 104

Federal Court House

Birmingham, Alabama 35203

(205) 731-1701

(FTS) 229-1701

[on right of above]

DIVISIONAL OFFICE

U.S. Post Office & Courthouse

101 Holmes Ave. N.E.

Huntsville, Alabama 35801

(205) 534-6595

January 13, 1987

Donald Cinnamond

Clerk of Court

United States District Court

Middle District of Florida

APPENDIX C (CONTINUED)

P.O. Box 53558

Jacksonville, Florida 32201-3558

Dear Mr. Cinnamond:

RE: JULIA L. ASAM vs. ROBERT J. SHAPIRO
Northern District of Alabama No.
CV 86-P-2020-W

The above civil action has been transferred from the Northern District of Alabama to the Middle District of Florida for further proceedings. We are enclosing our original pleadings, certified copy of the order of transfer and docket entries.

Please acknowledge receipt of these items by returning the extra copy of this letter.

Thank you for your cooperation in this matter.

Sincerely,

Charles T. Cliver, Clerk

By: /s/ Darlene Dudley
Deputy Clerk

/DD

cc: attys of record"

APPENDIX D

Pertinent parts of docket sheet typed in Appendix D - certified copy is being requested to be sent to the Clerk of the Supreme Court of the United States.

At the top of first docket sheet from left to right are listed the date, NR [number] Proceedings 87-006-CIV-FtM-17(B)

[First item]

"01/20/87 - NR 1 TRANSMITTAL LETTER forwarding original file from Northern District of Alabama.

"BEGIN PROCEEDINGS FROM NORTHERN DISTRICT OF ALABAMA"...

1987

Jan. 5- Motion of deft for extension of time to response to interrogatories, request for production and request for admissions, filed-cs-djd --1/7/87 GRANTED (POINTER); entered 1/7/87-cm-djd [Copy of order in APPENDIX B SHOWING TARGET DATE DISCOVERY DUE FEB. 9, 1987] ...

Jan. 13 - ORDER in accordance with the memo-

APPENDIX D (CONTINUED)

randum opinion entered contemporaneously that this action is transferred to the USDC for the Middle District of Florida, Fort Myers Division, filed (POINTER); entered 1/13/87-cm-djd] certified copy of transfer order, docket entries and original court file forwarded to USDC, Middle District Florida]"

... "02/04/87 - PROPOSED Default to be entered against Deft. affidavit of Julia Asam attached.

"02/04/87 -NR 4 - NOTICE of Motion for Default Judgment by Pltf.

"02/09/87 -NR 5 - MOTION for Judgment by Default by Pltf. Affidavit attached.

"02/11/87 -NR 8 ANSWER to Complaint by Deft. [NOTICE Answer filed late should have been filed on Jan. 23, 1987 - 10 days from Jan. 13, 1987 order].

"02/13/87 - NR 9 - MOTION Objecting to Motion for Default Judgment by Deft...

02/13/87 - NR 11 - MOTION to Strike by Deft...

"02/19/87 - NR 20 - "ORDER that Defts Motion Objecting to Motion for Entry of Default is

APPENDIX D (CONTINUED)

GRANTED and Pltfs Motion for Entry of Default is DENIED." s/EAK/02/19/87/Notifed."

..."02/20/87 - NR 24 - Motion to Strike Defts Motion to Strike because not filed within 20 days of service by Pltf. Proposed Order attached."

"02/20/87 NR 25 - MEMO in Support of Motion to Strike by Pltf."

..."03/05/87 NR 31 Motion for Extension of Time to Respond to Interrogatories and Motion for Protective Order by Pltf."

..."03/10/87 -NR - NOTICE OF Reinstatement to Court's Trial Docket (damages exceed $100,000.)

"03/09/87 - NR 34 MOTION for Summary Judgment by Pltf. Proposed Order attached.

"03/09/87 - NR 35 - AFFIDAVIT in Support of Motion for Summary Judgment by Pltf."

"03/09/87 - NR 36 - MEMO in Support of Motion for Summary Judgment by Pltf."

[Motion for Summary Judgment was denied.]"

APPENDIX E

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amendment V in pertinent part, as follows:

"no person shall ... be deprived of life, liberty or property, without due process of law".

28 U.S.C. §2106

"The Supreme Court of any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."

42 U.S.C. §1983

"Every person who, under color of any statute, ordinance, regulation, custom, usuage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United

APPENDIX E (CONTINUED)

or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities accured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

28 U.S.C. §1343(3)

3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usuage, or any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;"

APPENDIX E (CONTINUED)

28 U.s.C. §1651

"(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usuages and principles of law.

28 U.S.C. §1254

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(a) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of cer-

APPENDIX E (CONTINUED)

tiorari at the instance of such appellant, and the review on appeal shall be restricted the Federal questions presented;"

28 U.S.C. §1332

(a) The district court shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interests and costs, and is between --

(1) citizens of different States;..."

APPENDIX F

Filed August 17, 1987

IN THE U.S. COURT OF APPEALS

ELEVENTH CIRCUIT

JULIA L. ASAM, Ph.D., J.D.

Plaintiff/Petitioner/Appellant

v.

HON. ELIZABETH A. KOVACHEVICH

U.S. District Judge

Respondent/Appellee Case no. 87-3184

NOTICE OF APPEAL

NOTICE is hereby given that Julia L. Asam, Ph.D., J.D., (Julia McCain Lampkin Asam), Plaintiff/Petitioner/ and/or Appellant, above named, hereby appeals to the Supreme Court of the United States from the order of judgment entered on May 27, 1987 by the U.S. Court of Appeals, Eleventh Circuit (See Exhibit 1 attached -- same as APPENDIX A in brief to the Supreme Court of the United States.)

The Supreme Court of the United States has jurisdiction under the following:

28 U.S.C. §1254

APPENDIX F (CONTINUED)

28 U.S.C. §2106

42 U.S.C. §1983 (underlying case since malpractice case under 28 U.S.C. 1332 diversity of citizenship).

28 U.S.C. §1343 (3) and

28 U.S.C. §1651 The Supreme Court of the United States has authority to issue extraordinary writs. The appeal involves the denying of a Writ for Mandamus by the U.S. Court of Appeals, Eleventh Circuit, (87-3184).

Notice of Appeal to Supreme Court of the United States from U.S. Court of Appeals, Eleventh Circuit p.2

Proof of Service attached as well as Certificate of Service.

Jurisdictional Briefs (40 copies) have been sent to the Supreme Court of the United States together with the $200 docket fee.

Respectfully submitted,

/s/ Julia McCain Lampkin Asam

APPENDIX F (CONTINUED)

Julia McCain Lampkin Asam, Ph.D., J.D.

P.O. Box 1022

University, Alabama 35486

Attachments

Exhibit 1

Proof of Service

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above Notice of Appeal was sent to Honorable Elizabeth A. Kovachevich, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, The Supreme Court of the United States, U.S. Supreme Court Building, 1 First St. N.E., Washington, D.C. 20543; Mr. John D. Shofi, Attorney, Marlow, Shofi, et al., 2907 Bay to Bay Blvd. Ste. 201, The Bayshore Buildings, Tampa, Florida 33629 and Mr. Robert J. Shapiro, 13822 Creek Dr., Tampa, Florida 33618 this 14th day of August 1987.

/s/ Julia McCain Lampkin Asam.